Supreme Court, U.S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

No. 78-1732

H. RAY BAKER, INC., et al.,
Petitioners,

vs.

ASSOCIATED BANKING CORP.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
For the Ninth Circuit

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Cases

Constitution

Statutes

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The petitioners, H. Ray Baker, Inc., and Interquip Corporation, respectfully pray that a Writ of Certiorari issue to review the Opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on March 5, 1979.

OPINION BELOW

The opinion of the Ninth Circuit Court of Appeals is reported at 592 F.2d 550 (1979). A copy of said Opinion

appears as Appendix A hereto. The Order of the United States District Court for the Northern District of California appears as Appendix B hereto.

JURISDICTION

The Opinion of the United States Court of Appeals for the Ninth Circuit affirming the Order of the United States District Court for the Northern District of California granting respondent Associated Banking Corporation's Motion to Dismiss for Lack of Jurisdiction was entered on March 5, 1979. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether, in a diversity action, the refusal of the Federal Courts to exercise general personal jurisdiction over a Philippine bank violates the Due Process Clause of the Fourteenth Amendment where since 1971 respondent foreign bank maintains bank accounts with and accomplishes extensive international commercial activity exclusively in the United States through six California correspondent banks, including the issuance and servicing of letters of credit and where California, by statute and judicial decision has made manifest its intent to exercise jurisdiction over nonresident defendants to the fullest extent consistent with the United States Constitution.

2. Whether, in a diversity action, the refusal of the Federal Courts to exercise limited personal jurisdiction over a foreign banking corporation violates the Due Process Clause of the Fourteenth Amendment where respondent foreign bank maintains funds and accomplishes significant international banking activity exclusively through six California banks since 1971, including the providing of letter of credit services to its Philippine clients, where said bank has purposely invoked the protection of California law, and where the subject matter of the lawsuit, the dishonoring of an irrevocable letter of credit, is related to its correspondent banking activities in California, and where petitioners, corporations, doing business in California, negotiated the sales contract underlying the letter of credit in California, and where the letter of credit was presented to a California bank for payment and dishonored by respondent.

3. Whether the refusal of the Federal Courts to exercise jurisdiction over the respondent foreign bank violates the Due Process Clause of the Fourteenth Amendment where said respondent has property (bank accounts) in six California correspondent banks, and where no other forum in the United States is available to the petitioners to resolve its claim against the respondent for dishonoring an irrevocable letter of credit issued in the Philippines, and presented for payment in California.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 14:

> Section 1. Citizens of the United States. All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Code, Title 28:

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

California Code of Civil Procedure:

§ 410.10. A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this State or of the United States.

STATEMENT OF THE CASE

Petitioners, H. Ray Baker, Inc., ("Baker") and Interquip Corporation, ("Interquip") are Ohio corporations doing business in California and respondent Associated Banking Corporation, a/k/a Associated Citizen's Bank, ("ABC") is a Philippine banking firm having no offices in the United States. The action from which this petition arises involves the collection of monies owing to the petitioners evidenced by an irrevocable letter of credit in the total sum of $275,000.00 issued by respondent in the Philippines in 1971 and subsequently dishonored by it in California in 1974.

Interquip, during the time leading up to the issuance of the subject letter of credit, was involved in negotiations with Dura-Tire and Rubber Industries, Inc. ("Dura-Tire"), a Philippine corporation, for the sale to it of equipment and machinery. Petitioners conducted all of their negotiations with Dura-Tire from their offices in San Francisco, California, where they maintained inventory, paid taxes and were otherwise qualified to do business. Dura-Tire caused an irrevocable letter of credit to be issued by respondent ABC for the benefit of Baker as payment for the equipment sold and delivered in the Philippines.

Respondent, since 1971, does a substantial banking business in San Francisco, California through correspondent banks. Those institutions include Bank of America, Bank of California, Crocker Bank, United California Bank, First National City Bank-San Francisco, and First Chicago International Bank. Respondent also maintains non-interest bearing accounts in said banks. At one such bank, Bank of

America, respondent has a four hundred thousand dollar ($400,000.00) line of credit. Respondent conducts correspondent banking business in California so that its clients may effect mail or telegraphic transfers of funds between the Philippines and California, or so that clients may buy or sell goods in the United States through letters of credit.

The letter of credit issued by respondent was initially advised through Manufacturers Hanover Trust Company in New York. Manufacturers Hanover Trust Company confirmed only the first payment of $55,000.00, which was due on or after July 1, 1973 and paid. Manufacturers Hanover Trust Company refused engagement as to the July 1, 1974 and July 1, 1975 payments, which form the basis of this suit. The letter was subsequently assigned to Interquip and was presented for payment at the Security Pacific Bank in San Francisco in 1975, when it was dishonored by the respondent. Manufacturers Hanover Trust Company had nothing whatsoever to do with the 1975 transaction. Petitioners filed suit on January 13, 1976 in the United States District Court for the Northern District of California. Jurisdiction was based on the diverse citizenship of the adverse parties, the matter in controversy exceeding the sum of ten thousand dollars ($10,000.00). 28 U.S.C. § 1332.

Respondent was personally served with the Summons and Complaint in the Philippines. Proper service of process and fair notice of the action are not disputed by ABC.

Respondent moved to dismiss the action on April 28, 1976, alleging that the Court had not acquired personal jurisdiction over it and, in the alternative, that venue was

improperly laid in the District Court. Respondent's Motion was heard before the Honorable Albert C. Wollenberg on June 18, 1976 upon affidavits only. The District Court dismissed the action on July 21, 1976, for lack of personal jurisdiction over the respondent, relying on *Bank of America v. Whitney National Bank,* 261 U.S. 171 (1923), despite the fact that Associated Banking Corporation conducted and still conducts extensive business in California through correspondent banks and that ABC does not conduct business in any other state, and that the letter of credit was presented to a California bank for payment when dishonored.

A timely appeal was filed with the United States Court of Appeals for the Ninth Circuit. On March 5, 1979, the Court of Appeals affirmed the Order of the District Court dismissing the action for lack of personal jurisdiction over respondent. The Ninth Circuit affirmed the lower court's ruling, notwithstanding the fact that it found that respondent had purposefully invoked the protection of California law in order to reap economic benefits of the very type of transaction sued upon here.

Further, the Court of Appeals erroneously ruled that respondent lacked "minimum contacts" with the State of California. Since 1971 it has transacted continuous banking business in the United States through six correspondent banks in San Francisco, California, and no other United States forum is available to the petitioners.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Conflicts with Prior Supreme Court Decisions and Violates the Due Process Clause of the Fourteenth Amendment.

In 1923 this Court ruled that the transaction of business through correspondent banks by a non-resident corporation did not provide the sufficient basis upon which the courts could exercise jurisdiction over the non-resident corporations in the forum state of the correspondent banks without offending the dictates of Due Process. Physical presence of the non-resident was required. *Bank of America v. Whitney,* 261 U.S. 171 (1923). Fifty-three years later, in apparent disregard of the subsequent pronouncements of this Court liberalizing and expanding the Constitutional bases upon which personal jurisdiction may be exercised, the District Court, in blind allegiance to *Whitney,* ruled that the conduct of respondent's banking business through six correspondent banks in California, extending over a period of at least five years, was insufficient to confer jurisdiction in this case. (Appendix B, page 5).

Although *Whitney* was not specifically referred to in the decision of the Court of Appeals, a reading of its ruling confirms that it too followed the erroneous reasoning of the District Court and affirmed, sub silentio, the *Whitney* thesis, albeit veiled in the modern parlance of "minimum contacts", thereby depriving petitioners of their Due Process rights.

The decision of the Court of Appeals cannot be reconciled with the realities of modern business, nor with the guidelines established by this Court in a myriad of de-

cisions since *Whitney.* The Constitutional yardstick was established by this Court in *International Shoe v. Washington,* 326 U.S. 310, 316-320 (1945):

> ". . . Due process requires only that in order to subject a defendant to a judgment in personam, if he not be present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

This standard was recently confirmed and extended by this Court as the appropriate test governing the exercise of not only in personam jurisdiction, but also in rem and quasi in rem jurisdiction. *Shaffer v. Heitner,* 433 U.S. 186, 212 (1977). Likewise, as this Court has previously explained, the expansion of in personam jurisdiction pursuant to the concepts of due process is "attributable to the—increasing nationalization of commerce—[accompanied by] modern transportation and communication [that] have made it much less burdensome for a party sued to defend himself *in a State where he engages in economic activity.*" *McGee v. International Life Insurance Co.,* 355 U.S. 220, 222-223 (1957). (Emphasis added).

The decision of the Court of Appeals not only subverts petitioner's Due Process rights, but ignores the standards established by this Court. For example, how can the decision of the Court of Appeals be reconciled with *McGee,* where this Court found the exercise of personal jurisdiction over a foreign insurance company proper based upon the mailing of a single insurance policy to a California resident when International Life Ins. Co. was not licensed to do business in California, maintained no offices,

employees or agents in California, and transacted all of its business by mail whereas, in the instant petition, ABC has transacted its banking business continuously and systematically since 1971 through six California correspondent banks, which business includes the maintenance of non-interest bearing accounts, the transfer of funds between California and the Philippines, the processing of letters of credit to facilitate the sale and purchase of goods and merchandise between its Philippine clients and U.S. corporations, and where through voluntary activity on the part of ABC, it has reaped economic benefits and availed itself of the privileges and protection of California law regarding these transactions?

Equally persuasive and of no less importance to the Due Process issue in this case, are the express factual findings of the Court of Appeals:

> 1. "All of the negotiations between petitioners and Dura-Tire and Rubber Industries, Inc., ABC's Philippine client, for the consummation of the sale which led to the issuance of the letter of credit were conducted in San Francisco, California." (592 F.2d 551).
>
> 2. That petitioners, during the time of these negotiations, were doing business in California from their offices in San Francisco, California.
>
> 3. "ABC's deposits with the six California banks have a significance beyond the mere presence of funds, however, for they are one aspect of correspondent banking relationships undertaken by ABC for the express purpose of providing letter of credit services to the bank's Philippine clients in their business dealings with American entities." (592 F.2d 552).

> 4. "ABC has purposely invoked the protection of California law in order to reap the benefit of the very type of transaction sued on here." (592 F.2d 552).
>
> 5. "The sales contract underlying the letter of credit and on which the dishonor apparently was based is thoroughly connected to California." (592 F.2d 552).
>
> 6. The letter of credit was presented for payment on the second and third installments to the Security Pacific Bank in San Francisco, California, where it was dishonored by respondent ABC.

Given these facts, it would be difficult to envision a clearer denial of petitioner's Due Process rights, especially in light of the Court of Appeals' prior ruling that petitioners, in the trial court, need only establish a prima facie showing of jurisdictional facts to avoid a motion to dismiss, where, as in this case, the determination of jurisdiction is predicated upon affidavits only. *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

The ruling of the Court of Appeals under points three and four above, directly conflicts with this Court's ruling in *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) that

> "[I]t is essential in each case that there be some act by which defendant purposely avails [him]self of the privilege of conducting activities with the forum state. . . ."

The decision of the Court of Appeals directly conflicts with the decisions of this Court in *International Shoe Co. v. Washington, supra*, and *Shaffer v. Heitner, supra*.

> "Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness:

> 'Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation of the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.' "
>
> *Shaffer v. Heitner,* 433 U.S. 186, 204 (1977).

The question is no longer whether defendant's activity within the State "is a little more or a little less". *International Shoe v. Washington,* 326 U.S. at 319.

California, by statute, and by judicial decision permits the exercise of jurisdiction over non-resident defendants to the fullest extent consistent with the United States Constitution and adheres to the due process tests promulgated by this Court. *California Code of Civil Procedure,* Section 410.10; *Cornelison v. Chaney,* 16 Cal.3d 143, 147, 127 Cal. Rptr. 352 (1976); *Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d 893, 80 Cal.Rptr. 113 (1969). In keeping with the decisions of this Court, the California courts, in determining whether or not to exercise jurisdiction over a non-resident, focus on "economic reality" rather than a mechanical check list. *Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d at 903. "An enterprise obtains the benefits and protection of California laws if, as a matter of commercial actuality, it is engaged in economic activity within the state." *Id.,* at 901.

The decision of the Court of Appeals directly conflicts with the decisions of both this Court and the Supreme Court of California. ABC clearly has voluntarily engaged in economic activity within California through the medium of correspondent banks since 1971. It is therefore fair and reasonable to compel respondent to respond to this action in California.

The relative importance and "substantial impact and nature of correspondent bank activity for the banking community in general" has been recognized by the federal courts. In *National Auto Brokers Corp. v. General Motors Corp.,* 332 Fed.Supp. 280 (S.D.N.Y. 1971), the District Court stated:

> "The test is practical, realistic and whether the principal is licensed to do business in the District is not a decisive criterion. It is more foreseeable that correspondent activities would constitute a part of the banking business and be of benefit to the movant banks. It would in no way be unfair to require the movant banks to litigate in a forum from which they derive substantial and continuous benefit. . . ."
>
> *Id.,* at 284.

As Mr. Justice Brennan observed in his concurring and dissenting opinion in *Shaffer v. Heitner,* ". . . we are concerned solely with 'minimum' contacts, not the 'best" contacts." 433 U.S. at 228.

2. The Decision of the Court of Appeals Violates the Due Process Clause of the Fourteenth Amendment in that There is a Sufficient Relationship Between the Business Respondent Conducts Within California and the Cause of Action Sued Upon to Make the Exercise of Jurisdiction Over Respondent Fair and Reasonable.

Assuming, arguendo, that respondent's California banking activities do not provide the necessary "minimum contacts" for the permissible exercise of jurisdiction over it as to all causes of action, the Court of Appeals erred in ruling that there was an insufficient nexus between petitioners' claim and the admitted banking activities it engages in within California.

> "If, however, the defendant's activities in the forum are not so pervasive as to justify the exercise of general jurisdiction over him, then jurisdiction depends upon the quality and nature of his activity in the forum in relation to the particular cause of action. In such a situation, the cause of action must arise out of an act done or transaction consummated in the forum, or defendant must perform some other act by which he purposely avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws."
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> *Cornelison v. Chaney*, 16 Cal.3d 143, 147, 148, 127 Cal.Rptr. 352 (1976).

This statement accurately reflects the position of the United States Supreme Court. *Hanson v. Denckla*, 357 U.S. 235, 250-253 (1957).

Examination of the decision of the Court of Appeals against this Constitutional canvas reveals an incredible jurisdictional non sequitur, which subverts the most basic and rudimentary notions of Due Process. In its opinion, the Court of Appeals stated as follows:

> "ABC's deposits with the six California banks have a significance beyond the mere presence of funds, however, for they are one aspect of correspondent banking relationships undertaken by ABC for the express purpose of providing letter of credit services to the bank's Philippine clients in their business dealings with American entities. Thus, ABC has purposely invoked the protection of California law in order to reap the benefit of the very type of transaction sued on here. Moreover, the sales contract underlying the letter of credit and on which the dishonor apparently was based, is thoroughly connected to California."
>
> (Appendix A, 592 F.2d 552).

Given this finding, it is impossible to reconcile the Court of Appeals' denial of jurisdiction in this case with the rulings of this Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Hanson v. Denckla*, 357 U.S. 235 (1958); and *Shaffer v. Heitner*, 433 U.S. 186 (1977).

3. The Decision of the Court of Appeals Violates Petitioner's Rights to Due Process by Foreclosing Access to the Only United States Forum Available to Settle This Dispute.

The petition presents the Court with the opportunity to decide the very important issue it left open in *Shaffer v. Heitner*, to wit:

> "This case does not raise, and we therefore do not consider, the question whether the presence of a defendant's property in a State is a sufficient basis for jurisdiction when no other forum is available to the plaintiff."
>
> 433 U.S. 211, fn. 37.

It is admitted by respondent and acknowledged by the Court of Appeals in its decision that respondent maintains non-interest bearing bank accounts in six California correspondent banks. The Court of Appeals specifically held, "The presence of assets in California is a relevant contact, though not one that is sufficient by itself to confer jurisdiction." (Appendix A, page 5). Its ruling incorrectly assumes the availability of another more convenient forum in the United States. The courts in both Ohio and New York are unavailable to the petitioners, and even assuming they were, their interest in assuming jurisdiction is minimal compared to that of California.

Contrary to the understanding of the Court of Appeals, only the issuing bank, respondent in this case, is obligated by a letter of credit to honor drafts or demands for payment [U.C.C. § 5-114], unless the letter of credit is confirmed by another bank, which thereupon becomes directly obligated for payment under the letter of credit [U.C.C. § 5-107(2)]. An advising bank does not assume any obligation to honor drafts drawn on the letter of credit [U.C.C. § 5-107(1)]. Presentment of such drafts occurs when the drafts are presented to the bank obligated to pay [U.C.C. § 3-504], and dishonor occurs when payment is refused by the bank obligated to pay [U.C.C. § 3-507]. (These provisions are contained in Appendix C)

Placing these definitions in proper perspective as they pertain to the underlying dispute in this action, the respondent, ABC is the issuing bank, Manufacturers Hanover Trust Co. in New York was the advising bank and also the confirming bank as to the letter of credit for the payment due up to July 1, 1973. It refused to confirm drafts presented after that date, by specifically stating on the face of the letter of credit: "The balance of this credit is without engagement on our part." The dispute underlying this lawsuit concerns the presentment of drafts for the July 1, 1974 and July 1, 1975 installments that were dishonored by respondent, not Manufacturers Hanover Trust Co. These drafts were dishonored by ABC after attempted negotiation through the Security Pacific Bank in San Francisco, California.

Based thereon, New York has nothing to do with this controversy. Of equal importance is the fact that New

York courts refuse to exercise personal jurisdiction over a foreign bank based upon the existence of correspondent banking relationships in New York by adhering to the stricter "physical presence" jurisdictional test. For example, in *National Am. Corp. v. Federal Rep. of Nigeria*, 425 Fed.Supp. 1365 (S.D.N.Y. 1977), the District Court, sitting in a diversity case such as this one, ruled that based upon New York's strict jurisdictional requirements, it could not exercise in personam jurisdiction over a foreign bank having only correspondent banking relationships in New York. "New York has thus far declined to expand its jurisdiction to the Constitutionally permissible limits of *International Shoe*." (425 Fed.Supp. at 1369). See also *Amigo Foods Corp. v. Marine Midland Bank*, 39 N.Y.2d 391, 384 N.Y.S.2d 124 (1976).

Likewise, no basis for the exercise of personal jurisdiction exists in Ohio, nor was any considered by the Court of Appeals. Respondent transacts no business in Ohio, no negotiations or actions concerning the letter of credit or the underlying contract occurred in Ohio, nor does respondent maintain any offices or agents in Ohio or transact business through correspondent banks located therein. The fact that the petitioners are Ohio corporations is irrelevant. "The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with a forum State." *Hanson v. Denckla*, 357 U.S. at 253.

Furthermore, the existence and presence of bank accounts in California by respondents facilitate the transfer of funds between its Philippine clients and United

Appendices

Appendix "A"

United States Court of Appeals
Ninth Circuit

No. 76-2917

H. RAY BAKER, INC., et al.,
Plaintiff-Appellant,

v.

ASSOCIATED BANKING CORP.,
Defendant-Appellee.

[March 5, 1979]

Appeal from the United States District Court
for the Northern District of California

Before HUFSTEDLER and TANG, Circuit Judges, and SMITH,* District Judge.

TANG, Circuit Judge:

This is an action on an irrevocable letter of credit issued by the defendant, Associated Banking Corp. (ABC), a Philippine corporation, in favor of H. Ray Baker, Inc. (Baker) an Ohio corporation doing business in California, the proceeds of which were assigned to Interquip Corp. (Interquip), another Ohio corporation doing business in

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*Honorable Russell E. Smith, Chief Judge for the District of Montana, sitting by designation.

California. The district court dismissed for lack of jurisdiction over ABC. We affirm.

The facts are not disputed. Interquip negotiated with Dura-Tire and Rubber Industries, Inc. (Dura-Tire), a Philippine corporation, for the sale of equipment to Dura-Tire in the Philippines. All of these negotiations were conducted in San Francisco. Dura-Tire caused ABC to issue the irrevocable letter of credit for payment of the equipment. All negotiations between Dura-Tire and ABC were conducted in the Philippines.

The letter of credit originally called for a single shipment and payment in five installments, to be advised through Manufacturer's Hanover Trust Co. of New York. The letter was amended to permit partial shipments. The goods were shipped and the first installment paid by Manufacturer's Hanover Trust Co. Baker then assigned the proceeds of the letter of credit to Interquip and notified ABC of the assignment. Interquip presented the letter of credit for payment at a California bank. The letter was dishonored, purportedly because the equipment did not conform to contract terms.

ABC maintains correspondent banking relationships with six California banks; that is, ABC has non-interest bearing accounts with those banks for the purpose of processing letters of credit and facilitating the transfer of funds between California and the Philippines. ABC is not licensed to do business in California. It maintains no offices or employees or agents in California. Its sole contact with California is the maintenance of its accounts in the six California banks. Transactions regarding these accounts are

handled by wire, telephone or mail. No agent or employee of ABC has ever visited California in connection with these accounts.

In a diversity action such as this, the court must perform a two-step jurisdictional analysis: does the state in which the court sits have a long-arm statute which confers jurisdiction, and if so, is that exercise of jurisdiction consistent with due process? Rule 4(e), F.R.Civ.Pro.; *Forsythe v. Overmyer,* 576 F.2d 779 (9th Cir. 1978) *cert. denied* ..... U.S. ....., 99 S.Ct. 188, 58 L.Ed.2d 174 (1978); *Data Disc, Inc. v. Systems Technology Associates, Inc.,* 557 F.2d 1280 (9th Cir. 1977). The relevant state statute is Cal.Code Civ. Pro. § 410.10[1] which has been interpreted to provide that the limits on the state court's jurisdiction are co-extensive with the outer limits of due process. The two-step analysis therefore collapses into a single inquiry as to what due process permits. *Forsythe, supra* at 782.

Under a line of cases beginning with *International Shoe v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), two types of jurisdiction over non-resident defendants have evolved.

The jurisdictional inquiry focuses on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner* (1977) 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 53 L.Ed.2d 683. The defendant must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair

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[1]Cal.Code of Civ.Pro. § 410.10 reads as follows:
A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

play and substantial justice.'" *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95. The minimum contacts approach is based on a *quid pro quo* rationale. "[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state," it is fair to require the defendant to respond. *Id.* at 319, 66 S.Ct. at 160.

If the defendant's forum-related activity is "substantial" or "continuous and systematic," the relationship between the defendant and the state is sufficient to support jurisdiction even if the cause of action is unrelated to the defendant's forum activities. *Data Disc, Inc. v. Systems Technology Associates, Inc.*, (9th Cir. 1977) 557 F.2d 1280, 1287. This is sometimes referred to as general jurisdiction over the defendant.

If the defendant's contacts with the forum are insufficient to support general jurisdiction, jurisdiction may still lie if the nature and quality of those activities, considered in relation to the cause of action, make the assertion of jurisdiction fair and reasonable in the particular case. *Shaffer v. Heitner, supra,* 433 U.S. at 203-04, 97 S.Ct. 2569; *International Shoe v. Washington, supra,* 326 U.S. at 317-19, 66 S.Ct. 154. In making this evaluation, our Circuit uses the following approach:

'(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform

some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws. (2) The claim must be one which arises out of or results from the defendant's forum-related activities. (3) Exercise of jurisdiction must be reasonable.'

(Data Disc, Inc. v. Systems Technology Associates, Inc. supra, 557 F.2d at 1287 (citations omitted).)

Applying these principles to the facts of this case, it is clear that, as ABC's contacts with California were neither substantial nor systematic, general jurisdiction over ABC is lacking.

Since the relationship between ABC and California is not strong enough to confer jurisdiction over ABC for all causes of action, we turn to the question whether the relationship among the defendant, the forum, and the litigation permits the assertion of limited jurisdiction in this case. The presence of assets in California is a relevant contact, though not one that is sufficient by itself to confer jurisdiction. *Shaffer v. Heitner, supra,* 433 U.S. 186, 97 S.Ct. 2569. ABC's deposits with the six California banks have a significance beyond the mere presence of funds, however, for they are one aspect of correspondent banking relationships undertaken by ABC for the express purpose of providing letter of credit services to the bank's Philippine clients in their business dealings with American entities. Thus ABC has purposefully invoked the protection of California law in order to reap the benefit of the very type of transaction sued on here. Moreover, the sales contract underlying the letter of credit and on which the dis-

honor apparently was based is thoroughly connected to California.

A letter of credit is an undertaking by the issuing bank, usually in the buyer's country, that it will pay a draft drawn on it by the seller upon presentation of specified documents, such as a bill of lading.[2] This permits the seller to substitute the credit of a bank with an established international reputation for that of a foreign buyer whose credit worthiness may not be known in the seller's country. The bank's obligation under the letter of credit is independent of the underlying sales contract. If the presented documents comply with the terms of the letter of credit, the bank is obligated to pay regardless of whether the goods themselves conform to the contractual terms. The issuing bank instructs its correspondent in the seller's country to "advise" the credit; that is, to notify the beneficiary of the existence and terms of the credit. The advising bank assumes no duty of payment unless it "confirms" the credit at the issuing bank's request, thereby becoming independently liable to the beneficiary. This letter of credit also designated the advising bank as the paying bank and authorized Manufacturers to reimburse any bank that negotiated the draft for the seller from ABC's account with Manufacturers.

The existence of correspondent relationships with the six California banks did not put those banks on any special footing with regard to this letter of credit. While Baker

[2]For a more thorough discussion, *see* A. Davis, The Law Relating to Commercial Letters of Credit (3d ed. 1963); H. Gutteridge & M. Megrah, The Law of Bankers' Commercial Credits (4th ed. 1968); B. Kozolochyk, Commercial Letters of Credit in the Americas (1966); W. Ward & H. Harfield, Bank Credits and Acceptances (4th ed. 1958).

could have negotiated the letter of credit through any bank of its choice, any negotiating bank would have forwarded the draft to the paying bank in New York for reimbursement. A California correspondent would not have been authorized to accept the draft and pay it from ABC's account with that bank. From all that appears, this case is not analogous to products liability cases in which jurisdiction has been predicated on the fact that the defendant launched its defective product into the stream of commerce and therefore could foresee that it might be resold or transported into the forum state, there to injure the plaintiff. (E. g., *Jetco Elecontric Industries, Inc. v. Gardiner* (5th Cir. 1973) 473 F.2d 1228; *Andersen v. National Presto Industries, Inc.* (1965) 257 Iowa 911, 135 N.W.2d 639; *Gray v. American Radiator and Standard Sanitary Corp.* (1961) 22 Ill.2d 432, 176 N.E.2d 761; *see* Annot., 19 A.L.R.3d 13; Annot., 20 A.L.R.3d 957 (application to actions not based on products liability).) On the contrary, ABC's selection of a New York correspondent as the advising and paying bank confined the place of payment to New York, where the draft was later dishonored.

Although we recognize that evaluation of relevant contacts in this case must take into account the commercial realities of transactions involving international letters of credit, we think on this record that plaintiffs have failed to show that ABC could reasonably have expected the issuance or negotiation of this letter to have effects in California that would make it fair to require it to defend this suit there.

AFFIRMED.

Appendix "B"

United States District Court
Northern District of California

No. C-76-80 ACW

H. Ray Baker, Inc., a corporation, and Interquip Corporation, a corporation,
Plaintiffs,

vs.

Associated Banking Corporation, a corporation,
Defendant.

[Filed July 21, 1976]

ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS

In this diversity action, two Ohio corporations have sued a Philippine banking corporation over the latter party's alleged failure to honor a letter of credit. Presently before the Court are defendant's motions to dismiss the complaint for lack of jurisdiction over the defendant and to dismiss the complaint because of improper venue.

For the purposes of this motion, the factual allegations of the complaint are considered to be true. The Court has also considered the affidavits and exhibits submitted by the parties, as it may when deciding motions brought pursuant

to Rule 12(b)(2) of the Federal Rules of Civil Procedure. 2A *Moore's Federal Practice* ¶ 12.09[3]. While the parties disagree over the legal conclusions that may be drawn from these materials, no conflicts over material facts are present. Cf. *O'Hare International Bank v. Hampton,* 437 F.2d 1173 (7th 1971).

Because this is a diversity case, the California longarm statute, Code of Civil Procedure § 410.10 determines whether jurisdiction can be asserted over the defendant.[1] The statute provides for jurisdiction to the full extent of the California Constitution and the Due Process Clause of the Fourteenth Amendment. *Cornelison v. Chaney,* 16 Cal.3d 143, 147, 127 Cal.Rptr. 352, 354 (1976); *Republic International Corp. v. Amco Engineers, Inc.,* 516 F.2d 161, 166-167 (9th Cir. 1975).

The letter of credit in this case was issued by a bank in the Philippines for the benefit of an Ohio corporation and was to be processed, or "advised", through a trust company in New York. Plaintiffs assert that negotiations with Dura-Tire and Rubber Industries, the Philippine client of the defendant on whose behalf the letter of credit was issued, took place in California. However, there is nothing in the record to show that defendant was involved or even aware of these negotiations. No negotiations concerning the issuance of the letter of credit took place in California. Plaintiffs have not shown that defendant's alleged actions had any appreciable effects in California. They have not shown

[1]California Code of Civil Procedure § 410.10 provides that:
A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

that defendant intended its actions to have an effect in California or that defendant should have reasonably expected its actions to have any such effects. Assignment by plaintiffs of the letter of credit to a California bank for collection purposes cannot be considered an action of the defendant. Considering all these circumstances, plaintiffs' cause of action does not arise from or relate to any activities defendant undertakes in California.

Alternatively, plaintiffs maintain that defendant carries on sufficient business in California to constitutionally permit requiring it to defend in California against actions unrelated to its business activities in this state.[2] Defendant does have business relationships with six correspondent banks in California, and these relationships must be analyzed in order to evaluate plaintiffs' contention.

Defendant is not licensed to do business in California. It maintains no offices in this state, and it has no employees, agents, or telephone listings here. It does maintain non-interest bearing accounts with six California banks. All transactions with these banks are conducted by mail, telegraph, or telex, and no employees of defendant have visited California in connection with the arrangements between defendant and its correspondent banks. The relationships between defendant and its correspondent banks are described in the second affidavit of Roman

[2]It should be noted that the viability of this theory may be open to doubt. *Aanestad v. Beech Aircraft Corp.*, 521 F.2d 1298, 1301 n. 1 (9th Cir. 1974); Von Mehren and Trautman, "Jurisdiction to Adjudicate: A Suggested Analysis", 79 *Harvard Law Review* 1121, 1144 (1966).

Bernardo,[3] and are insufficient to justify the assertion of jurisdiction over defendant in this action.

At the outset, it is not clear that these relationships are substantial enough to uphold plaintiffs' position. Records from two banks were submitted by plaintiffs. The records from Crocker National Bank show that defendant has maintained an account there for some time, but the balance is not very large and many of the transactions are for extremely small amounts. The records from the Bank of California pertain primarily to the Citizens Bank and Trust Company, a Philippine bank which apparently did not merge with defendant until January of 1976. The letter from the Manila branch of the Bank of America extending a line of credit to defendant does not contain information relating to defendant's actual activities in California. Cf. *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir. 1971). Since plaintiffs' cause of action is not related to defendant's activities in California, more than "minimum contacts" with the state are required, and it would be difficult to say that plaintiffs have shown sufficient contacts here. Cf. *Cornelison v. Chaney, supra,* 16 Cal.3d at 149, 127 Cal.Rptr. at 355.

It may be that records from all six banks would show a much more extensive business relationship with California.[4] Nevertheless, the nature of defendant's business in California would not subject it to "general" jurisdiction for causes of action not arising from that business. All of defendant's California business is carried on by the correspondent banks. These banks are not controlled by the defendant, nor is defendant their sole or even primary source of business. The conduct of defendant's business by independent, nonexclusive representatives is not sufficient to confer jurisdiction in the present case. *Bank of America v. Whitney Central National Bank*, 261 U.S. 171 (1923); *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333, 336 (1925); *Fisher Governor Co. v. Superior Court*, 53 Cal.2d 222, 1 Cal.Rptr. 1 (1959).

Finally, the assertion of jurisdiction over defendant in this case would not be proper even if the nature and amount of defendant's business in California could theoretically subject it to "general" jurisdiction. Jurisdiction over the defendant must, in the particular circumstances of this case, still be fair and "reasonable". See *Lee v. Walworth Valve Co.*, 482 F.2d 297 (4th Cir. 1973). Plaintiffs have shown no particular interest that the state of California would have in providing a forum for this litigation. There is apparently no possibility of multiple suits if this action is not brought in California. Other forums in the United States with a greater interest in the litigation, notably New York and Ohio, may be available to plaintiffs, and litigating there would appear to create fewer burdens on plaintiffs than litigating in California. Plaintiffs have not even identified any particular advantage obtained under California law that cannot be obtained elsewhere. Plaintiffs have not sufficiently detailed any factors that would make it reasonable to conduct this litigation in California

[3]The affidavit is attached to defendant's brief in support of its motion filed April 28, 1976.

[4]Plaintiffs noticed depositions of the custodians of records of the Bank of America and the United California Bank on April 30 and June 7, 1976, but have submitted no records from those banks, nor have they submitted anything pertaining to the final two correspondent banks, First National City Bank-San Francisco and First Chicago International Bank. Plaintiffs have not requested additional discovery time in order to obtain additional records.

and make the assertion of jurisdiction over defendant in this case consistent with the Due Process Clause of the Fourteenth Amendment.[5]

ACCORDINGLY, IT IS HEREBY ORDERED that defendant's motion to dismiss for lack of jurisdiction over the defendant is GRANTED.

Dated: July 21, 1976.

/s/ ALBERT C. WOLLENBERG
Albert C. Wollenberg
United States District Judge

[5]It is therefore unnecessary to discuss defendant's motion to dismiss because of improper venue.

Appendix "C"

Uniform Commercial Code (1972 Official Text)

§ 3—504. How Presentment Made

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made.

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in Section 4—210 presentment may be made in the manner and with the result stated in that section. As amended 1962.

§ 3—507. Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment

(1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be

obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (Section 4—301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

§ 5—107. Advice of Credit; Confirmation; Error in Statement of Terms

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

§ 5—114. Issuer's Duty and Privilege to Honor; Right to Reimbursement

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (Section 7—507) or of a security (Section 8—306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3—302) and

employees or agents in California, and transacted all of its business by mail whereas, in the instant petition, ABC has transacted its banking business continuously and systematically since 1971 through six California correspondent banks, which business includes the maintenance of non-interest bearing accounts, the transfer of funds between California and the Philippines, the processing of letters of credit to facilitate the sale and purchase of goods and merchandise between its Philippine clients and U.S. corporations, and where through voluntary activity on the part of ABC, it has reaped economic benefits and availed itself of the privileges and protection of California law regarding these transactions?

Equally persuasive and of no less importance to the Due Process issue in this case, are the express factual findings of the Court of Appeals:

> 1. "All of the negotiations between petitioners and Dura-Tire and Rubber Industries, Inc., ABC's Philippine client, for the consummation of the sale which led to the issuance of the letter of credit were conducted in San Francisco, California." (592 F.2d 551).
>
> 2. That petitioners, during the time of these negotiations, were doing business in California from their offices in San Francisco, California.
>
> 3. "ABC's deposits with the six California banks have a significance beyond the mere presence of funds, however, for they are one aspect of correspondent banking relationships undertaken by ABC for the express purpose of providing letter of credit services to the bank's Philippine clients in their business dealings with American entities." (592 F.2d 552).

> 4. "ABC has purposely invoked the protection of California law in order to reap the benefit of the very type of transaction sued on here." (592 F.2d 552).
>
> 5. "The sales contract underlying the letter of credit and on which the dishonor apparently was based is thoroughly connected to California." (592 F.2d 552).
>
> 6. The letter of credit was presented for payment on the second and third installments to the Security Pacific Bank in San Francisco, California, where it was dishonored by respondent ABC.

Given these facts, it would be difficult to envision a clearer denial of petitioner's Due Process rights, especially in light of the Court of Appeals' prior ruling that petitioners, in the trial court, need only establish a prima facie showing of jurisdictional facts to avoid a motion to dismiss, where, as in this case, the determination of jurisdiction is predicated upon affidavits only. *Data Disc, Inc. v. Systems Technology Associates, Inc.,* 557 F.2d 1280, 1285 (9th Cir. 1977).

The ruling of the Court of Appeals under points three and four above, directly conflicts with this Court's ruling in *Hanson v. Denckla,* 357 U.S. 235, 253 (1958) that

> "[I]t is essential in each case that there be some act by which defendant purposely avails [him]self of the privilege of conducting activities with the forum state. . . ."

The decision of the Court of Appeals directly conflicts with the decisions of this Court in *International Shoe Co. v. Washington, supra,* and *Shaffer v. Heitner, supra.*

> "Mechanical or quantitative evaluations of the defendant's activities in the forum could not resolve the question of reasonableness:

> 'Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation of the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.'"
>
> *Shaffer v. Heitner,* 433 U.S. 186, 204 (1977).

The question is no longer whether defendant's activity within the State "is a little more or a little less". *International Shoe v. Washington,* 326 U.S. at 319.

California, by statute, and by judicial decision permits the exercise of jurisdiction over non-resident defendants to the fullest extent consistent with the United States Constitution and adheres to the due process tests promulgated by this Court. *California Code of Civil Procedure,* Section 410.10; *Cornelison v. Chaney,* 16 Cal.3d 143, 147, 127 Cal. Rptr. 352 (1976); *Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d 893, 80 Cal.Rptr. 113 (1969). In keeping with the decisions of this Court, the California courts, in determining whether or not to exercise jurisdiction over a non-resident, focus on "economic reality" rather than a mechanical check list. *Buckeye Boiler Co. v. Superior Court,* 71 Cal.2d at 903. "An enterprise obtains the benefits and protection of California laws if, as a matter of commercial actuality, it is engaged in economic activity within the state." *Id.,* at 901.

The decision of the Court of Appeals directly conflicts with the decisions of both this Court and the Supreme Court of California. ABC clearly has voluntarily engaged in economic activity within California through the medium of correspondent banks since 1971. It is therefore fair and reasonable to compel respondent to respond to this action in California.

The relative importance and "substantial impact and nature of correspondent bank activity for the banking community in general" has been recognized by the federal courts. In *National Auto Brokers Corp. v. General Motors Corp.,* 332 Fed.Supp. 280 (S.D.N.Y. 1971), the District Court stated:

> "The test is practical, realistic and whether the principal is licensed to do business in the District is not a decisive criterion. It is more foreseeable that correspondent activities would constitute a part of the banking business and be of benefit to the movant banks. It would in no way be unfair to require the movant banks to litigate in a forum from which they derive substantial and continuous benefit. . . ."
>
> *Id.,* at 284.

As Mr. Justice Brennan observed in his concurring and dissenting opinion in *Shaffer v. Heitner,* ". . . we are concerned solely with 'minimum' contacts, not the 'best" contacts." 433 U.S. at 228.

2. The Decision of the Court of Appeals Violates the Due Process Clause of the Fourteenth Amendment in that There is a Sufficient Relationship Between the Business Respondent Conducts Within California and the Cause of Action Sued Upon to Make the Exercise of Jurisdiction Over Respondent Fair and Reasonable.

Assuming, arguendo, that respondent's California banking activities do not provide the necessary "minimum contacts" for the permissible exercise of jurisdiction over it as to all causes of action, the Court of Appeals erred in ruling that there was an insufficient nexus between petitioners' claim and the admitted banking activities it engages in within California.

> "If, however, the defendant's activities in the forum are not so pervasive as to justify the exercise of general jurisdiction over him, then jurisdiction depends upon the quality and nature of his activity in the forum in relation to the particular cause of action. In such a situation, the cause of action must arise out of an act done or transaction consummated in the forum, or defendant must perform some other act by which he purposely avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws."
>
> *Cornelison v. Chaney*, 16 Cal.3d 143, 147, 148, 127 Cal.Rptr. 352 (1976).

This statement accurately reflects the position of the United States Supreme Court. *Hanson v. Denckla*, 357 U.S. 235, 250-253 (1957).

Examination of the decision of the Court of Appeals against this Constitutional canvas reveals an incredible jurisdictional non sequitur, which subverts the most basic and rudimentary notions of Due Process. In its opinion, the Court of Appeals stated as follows:

> "ABC's deposits with the six California banks have a significance beyond the mere presence of funds, however, for they are one aspect of correspondent banking relationships undertaken by ABC for the express purpose of providing letter of credit services to the bank's Philippine clients in their business dealings with American entities. Thus, ABC has purposely invoked the protection of California law in order to reap the benefit of the very type of transaction sued on here. Moreover, the sales contract underlying the letter of credit and on which the dishonor apparently was based, is thoroughly connected to California."
>
> (Appendix A, 592 F.2d 552).

Given this finding, it is impossible to reconcile the Court of Appeals' denial of jurisdiction in this case with the rulings of this Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Hanson v. Denckla*, 357 U.S. 235 (1958); and *Shaffer v. Heitner*, 433 U.S. 186 (1977).

3. The Decision of the Court of Appeals Violates Petitioner's Rights to Due Process by Foreclosing Access to the Only United States Forum Available to Settle This Dispute.

The petition presents the Court with the opportunity to decide the very important issue it left open in *Shaffer v. Heitner*, to wit:

> "This case does not raise, and we therefore do not consider, the question whether the presence of a defendant's property in a State is a sufficient basis for jurisdiction when no other forum is available to the plaintiff."
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> 433 U.S. 211, fn. 37.

It is admitted by respondent and acknowledged by the Court of Appeals in its decision that respondent maintains non-interest bearing bank accounts in six California correspondent banks. The Court of Appeals specifically held, "The presence of assets in California is a relevant contact, though not one that is sufficient by itself to confer jurisdiction." (Appendix A, page 5). Its ruling incorrectly assumes the availability of another more convenient forum in the United States. The courts in both Ohio and New York are unavailable to the petitioners, and even assuming they were, their interest in assuming jurisdiction is minimal compared to that of California.

Contrary to the understanding of the Court of Appeals, only the issuing bank, respondent in this case, is obligated by a letter of credit to honor drafts or demands for payment [U.C.C. § 5-114], unless the letter of credit is confirmed by another bank, which thereupon becomes directly obligated for payment under the letter of credit [U.C.C. § 5-107(2)]. An advising bank does not assume any obligation to honor drafts drawn on the letter of credit [U.C.C. § 5-107(1)]. Presentment of such drafts occurs when the drafts are presented to the bank obligated to pay [U.C.C. § 3-504], and dishonor occurs when payment is refused by the bank obligated to pay [U.C.C. § 3-507]. (These provisions are contained in Appendix C)

Placing these definitions in proper perspective as they pertain to the underlying dispute in this action, the respondent, ABC is the issuing bank, Manufacturers Hanover Trust Co. in New York was the advising bank and also the confirming bank as to the letter of credit for the payment due up to July 1, 1973. It refused to confirm drafts presented after that date, by specifically stating on the face of the letter of credit: "The balance of this credit is without engagement on our part." The dispute underlying this lawsuit concerns the presentment of drafts for the July 1, 1974 and July 1, 1975 installments that were dishonored by respondent, not Manufacturers Hanover Trust Co. These drafts were dishonored by ABC after attempted negotiation through the Security Pacific Bank in San Francisco, California.

Based thereon, New York has nothing to do with this controversy. Of equal importance is the fact that New

York courts refuse to exercise personal jurisdiction over a foreign bank based upon the existence of correspondent banking relationships in New York by adhering to the stricter "physical presence" jurisdictional test. For example, in *National Am. Corp. v. Federal Rep. of Nigeria*, 425 Fed.Supp. 1365 (S.D.N.Y. 1977), the District Court, sitting in a diversity case such as this one, ruled that based upon New York's strict jurisdictional requirements, it could not exercise in personam jurisdiction over a foreign bank having only correspondent banking relationships in New York. "New York has thus far declined to expand its jurisdiction to the Constitutionally permissible limits of *International Shoe*." (425 Fed.Supp. at 1369). See also *Amigo Foods Corp. v. Marine Midland Bank*, 39 N.Y.2d 391, 384 N.Y.S.2d 124 (1976).

Likewise, no basis for the exercise of personal jurisdiction exists in Ohio, nor was any considered by the Court of Appeals. Respondent transacts no business in Ohio, no negotiations or actions concerning the letter of credit or the underlying contract occurred in Ohio, nor does respondent maintain any offices or agents in Ohio or transact business through correspondent banks located therein. The fact that the petitioners are Ohio corporations is irrelevant. "The unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with a forum State." *Hanson v. Denckla*, 357 U.S. at 253.

Furthermore, the existence and presence of bank accounts in California by respondents facilitate the transfer of funds between its Philippine clients and United

States corporations such as petitioners for payment of letters of credit. Hence, the very nature of the property located in California is directly related to the underlying dispute in this action and forms an independent basis for the exercise of jurisdiction over respondent. To rule otherwise would force petitioners to pursue their remedies in the Courts of the Philippines, assuming that any were available to them in such foreign tribunals.

Such a result should not be countenanced by this Court. The decision of the Court of Appeals is clearly erroneous. It accords to foreign corporations greater rights than those enjoyed by United States citizens, whether individual or corporate. It is not due process where a foreign corporation doing business in the United States is permitted to breach its obligations with impunity while still enjoying the benefits and protections of its laws.

Such discrimination can on no Constitutional or rational basis be reconciled with due process of law, especially where petitioners are considered corporate residents of California. "It cannot be denied that California has a manifest interest in providing effective means of redress for its residents. . . ." *McGee v. International Life Insurance Co.*, 355 U.S. at 223. "The forum state, of course, has an interest in opening its courts to residents seeking redress." *Buckeye Boiler Co. v. Superior Court*, 71 Cal.2d at 899.

4. Resolution of the Issues in this Case is Important to a Substantial Segment of American Society.

The issues herein have a significance that transcends the interest of the parties. Resolution is important to American business firms who deal with foreign non-resident corporations through letters of credit. It is important to the international banking community and it is important to the courts of all fifty states in determining the reach of their respective jurisdictional laws.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the decision of the United States Court of Appeals for the Ninth Circuit.

Dated: May 8, 1979.

Respectfully submitted,

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Counsel for Petitioners

(Appendices Follow)

Appendices

Appendix "A"

United States Court of Appeals
Ninth Circuit

No. 76-2917

H. RAY BAKER, INC., et al.,
Plaintiff-Appellant,

v.

ASSOCIATED BANKING CORP.,
Defendant-Appellee.

[March 5, 1979]

Appeal from the United States District Court
for the Northern District of California

Before HUFSTEDLER and TANG, Circuit Judges, and SMITH,* District Judge.

TANG, Circuit Judge:

This is an action on an irrevocable letter of credit issued by the defendant, Associated Banking Corp. (ABC), a Philippine corporation, in favor of H. Ray Baker, Inc. (Baker) an Ohio corporation doing business in California, the proceeds of which were assigned to Interquip Corp. (Interquip), another Ohio corporation doing business in

*Honorable Russell E. Smith, Chief Judge for the District of Montana, sitting by designation.

California. The district court dismissed for lack of jurisdiction over ABC. We affirm.

The facts are not disputed. Interquip negotiated with Dura-Tire and Rubber Industries, Inc. (Dura-Tire), a Philippine corporation, for the sale of equipment to Dura-Tire in the Philippines. All of these negotiations were conducted in San Francisco. Dura-Tire caused ABC to issue the irrevocable letter of credit for payment of the equipment. All negotiations between Dura-Tire and ABC were conducted in the Philippines.

The letter of credit originally called for a single shipment and payment in five installments, to be advised through Manufacturer's Hanover Trust Co. of New York. The letter was amended to permit partial shipments. The goods were shipped and the first installment paid by Manufacturer's Hanover Trust Co. Baker then assigned the proceeds of the letter of credit to Interquip and notified ABC of the assignment. Interquip presented the letter of credit for payment at a California bank. The letter was dishonored, purportedly because the equipment did not conform to contract terms.

ABC maintains correspondent banking relationships with six California banks; that is, ABC has non-interest bearing accounts with those banks for the purpose of processing letters of credit and facilitating the transfer of funds between California and the Philippines. ABC is not licensed to do business in California. It maintains no offices or employees or agents in California. Its sole contact with California is the maintenance of its accounts in the six California banks. Transactions regarding these accounts are

handled by wire, telephone or mail. No agent or employee of ABC has ever visited California in connection with these accounts.

In a diversity action such as this, the court must perform a two-step jurisdictional analysis: does the state in which the court sits have a long-arm statute which confers jurisdiction, and if so, is that exercise of jurisdiction consistent with due process? Rule 4(e), F.R.Civ.Pro.; *Forsythe v. Overmyer,* 576 F.2d 779 (9th Cir. 1978) *cert. denied* ..... U.S. ....., 99 S.Ct. 188, 58 L.Ed.2d 174 (1978); *Data Disc, Inc. v. Systems Technology Associates, Inc.,* 557 F.2d 1280 (9th Cir. 1977). The relevant state statute is Cal.Code Civ. Pro. § 410.10[1] which has been interpreted to provide that the limits on the state court's jurisdiction are co-extensive with the outer limits of due process. The two-step analysis therefore collapses into a single inquiry as to what due process permits. *Forsythe, supra* at 782.

Under a line of cases beginning with *International Shoe v. Washington,* 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), two types of jurisdiction over non-resident defendants have evolved.

The jurisdictional inquiry focuses on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner* (1977) 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 53 L.Ed.2d 683. The defendant must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair

[1]Cal.Code of Civ.Pro. § 410.10 reads as follows:
A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

play and substantial justice.'" *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95. The minimum contacts approach is based on a *quid pro quo* rationale. "[T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state," it is fair to require the defendant to respond. *Id.* at 319, 66 S.Ct. at 160.

If the defendant's forum-related activity is "substantial" or "continuous and systematic," the relationship between the defendant and the state is sufficient to support jurisdiction even if the cause of action is unrelated to the defendant's forum activities. *Data Disc, Inc. v. Systems Technology Associates, Inc.*, (9th Cir. 1977) 557 F.2d 1280, 1287. This is sometimes referred to as general jurisdiction over the defendant.

If the defendant's contacts with the forum are insufficient to support general jurisdiction, jurisdiction may still lie if the nature and quality of those activities, considered in relation to the cause of action, make the assertion of jurisdiction fair and reasonable in the particular case. *Shaffer v. Heitner, supra,* 433 U.S. at 203-04, 97 S.Ct. 2569; *International Shoe v. Washington, supra,* 326 U.S. at 317-19, 66 S.Ct. 154. In making this evaluation, our Circuit uses the following approach:

'(1) The nonresident defendant must do some act or consummate some transaction with the forum or perform

some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws. (2) The claim must be one which arises out of or results from the defendant's forum-related activities. (3) Exercise of jurisdiction must be reasonable.'

(Data Disc, Inc. v. Systems Technology Associates, Inc. supra, 557 F.2d at 1287 (citations omitted).)

Applying these principles to the facts of this case, it is clear that, as ABC's contacts with California were neither substantial nor systematic, general jurisdiction over ABC is lacking.

Since the relationship between ABC and California is not strong enough to confer jurisdiction over ABC for all causes of action, we turn to the question whether the relationship among the defendant, the forum, and the litigation permits the assertion of limited jurisdiction in this case. The presence of assets in California is a relevant contact, though not one that is sufficient by itself to confer jurisdiction. *Shaffer v. Heitner, supra,* 433 U.S. 186, 97 S.Ct. 2569. ABC's deposits with the six California banks have a significance beyond the mere presence of funds, however, for they are one aspect of correspondent banking relationships undertaken by ABC for the express purpose of providing letter of credit services to the bank's Philippine clients in their business dealings with American entities. Thus ABC has purposefully invoked the protection of California law in order to reap the benefit of the very type of transaction sued on here. Moreover, the sales contract underlying the letter of credit and on which the dis-

honor apparently was based is thoroughly connected to California.

A letter of credit is an undertaking by the issuing bank, usually in the buyer's country, that it will pay a draft drawn on it by the seller upon presentation of specified documents, such as a bill of lading.[2] This permits the seller to substitute the credit of a bank with an established international reputation for that of a foreign buyer whose credit worthiness may not be known in the seller's country. The bank's obligation under the letter of credit is independent of the underlying sales contract. If the presented documents comply with the terms of the letter of credit, the bank is obligated to pay regardless of whether the goods themselves conform to the contractual terms. The issuing bank instructs its correspondent in the seller's country to "advise" the credit; that is, to notify the beneficiary of the existence and terms of the credit. The advising bank assumes no duty of payment unless it "confirms" the credit at the issuing bank's request, thereby becoming independently liable to the beneficiary. This letter of credit also designated the advising bank as the paying bank and authorized Manufacturers to reimburse any bank that negotiated the draft for the seller from ABC's account with Manufacturers.

The existence of correspondent relationships with the six California banks did not put those banks on any special footing with regard to this letter of credit. While Baker

[2]For a more thorough discussion, *see* A. Davis, The Law Relating to Commercial Letters of Credit (3d ed. 1963); H. Gutteridge & M. Megrah, The Law of Bankers' Commercial Credits (4th ed. 1968); B. Kozolochyk, Commercial Letters of Credit in the Americas (1966); W. Ward & H. Harfield, Bank Credits and Acceptances (4th ed. 1958).

could have negotiated the letter of credit through any bank of its choice, any negotiating bank would have forwarded the draft to the paying bank in New York for reimbursement. A California correspondent would not have been authorized to accept the draft and pay it from ABC's account with that bank. From all that appears, this case is not analogous to products liability cases in which jurisdiction has been predicated on the fact that the defendant launched its defective product into the stream of commerce and therefore could foresee that it might be resold or transported into the forum state, there to injure the plaintiff. (E. g., *Jetco Elecontric Industries, Inc. v. Gardiner* (5th Cir. 1973) 473 F.2d 1228; *Andersen v. National Presto Industries, Inc.* (1965) 257 Iowa 911, 135 N.W.2d 639; *Gray v. American Radiator and Standard Sanitary Corp.* (1961) 22 Ill.2d 432, 176 N.E.2d 761; *see* Annot., 19 A.L.R.3d 13; Annot., 20 A.L.R.3d 957 (application to actions not based on products liability).) On the contrary, ABC's selection of a New York correspondent as the advising and paying bank confined the place of payment to New York, where the draft was later dishonored.

Although we recognize that evaluation of relevant contacts in this case must take into account the commercial realities of transactions involving international letters of credit, we think on this record that plaintiffs have failed to show that ABC could reasonably have expected the issuance or negotiation of this letter to have effects in California that would make it fair to require it to defend this suit there.

AFFIRMED.

Appendix "B"

United States District Court
Northern District of California

No. C-76-80 ACW

H. Ray Baker, Inc., a corporation, and Interquip Corporation, a corporation,
Plaintiffs,

vs.

Associated Banking Corporation, a corporation,
Defendant.

[Filed July 21, 1976]

ORDER GRANTING
DEFENDANT'S MOTION TO DISMISS

In this diversity action, two Ohio corporations have sued a Philippine banking corporation over the latter party's alleged failure to honor a letter of credit. Presently before the Court are defendant's motions to dismiss the complaint for lack of jurisdiction over the defendant and to dismiss the complaint because of improper venue.

For the purposes of this motion, the factual allegations of the complaint are considered to be true. The Court has also considered the affidavits and exhibits submitted by the parties, as it may when deciding motions brought pursuant

to Rule 12(b)(2) of the Federal Rules of Civil Procedure. 2A *Moore's Federal Practice* ¶ 12.09[3]. While the parties disagree over the legal conclusions that may be drawn from these materials, no conflicts over material facts are present. Cf. *O'Hare International Bank v. Hampton,* 437 F.2d 1173 (7th 1971).

Because this is a diversity case, the California longarm statute, Code of Civil Procedure § 410.10 determines whether jurisdiction can be asserted over the defendant.[1] The statute provides for jurisdiction to the full extent of the California Constitution and the Due Process Clause of the Fourteenth Amendment. *Cornelison v. Chaney,* 16 Cal.3d 143, 147, 127 Cal.Rptr. 352, 354 (1976); *Republic International Corp. v. Amco Engineers, Inc.,* 516 F.2d 161, 166-167 (9th Cir. 1975).

The letter of credit in this case was issued by a bank in the Philippines for the benefit of an Ohio corporation and was to be processed, or "advised", through a trust company in New York. Plaintiffs assert that negotiations with Dura-Tire and Rubber Industries, the Philippine client of the defendant on whose behalf the letter of credit was issued, took place in California. However, there is nothing in the record to show that defendant was involved or even aware of these negotiations. No negotiations concerning the issuance of the letter of credit took place in California. Plaintiffs have not shown that defendant's alleged actions had any appreciable effects in California. They have not shown

[1]California Code of Civil Procedure § 410.10 provides that:
A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

that defendant intended its actions to have an effect in California or that defendant should have reasonably expected its actions to have any such effects. Assignment by plaintiffs of the letter of credit to a California bank for collection purposes cannot be considered an action of the defendant. Considering all these circumstances, plaintiffs' cause of action does not arise from or relate to any activities defendant undertakes in California.

Alternatively, plaintiffs maintain that defendant carries on sufficient business in California to constitutionally permit requiring it to defend in California against actions unrelated to its business activities in this state.[2] Defendant does have business relationships with six correspondent banks in California, and these relationships must be analyzed in order to evaluate plaintiffs' contention.

Defendant is not licensed to do business in California. It maintains no offices in this state, and it has no employees, agents, or telephone listings here. It does maintain non-interest bearing accounts with six California banks. All transactions with these banks are conducted by mail, telegraph, or telex, and no employees of defendant have visited California in connection with the arrangements between defendant and its correspondent banks. The relationships between defendant and its correspondent banks are described in the second affidavit of Roman

[2]It should be noted that the viability of this theory may be open to doubt. *Aanestad v. Beech Aircraft Corp.,* 521 F.2d 1298, 1301 n. 1 (9th Cir. 1974); Von Mehren and Trautman, "Jurisdiction to Adjudicate: A Suggested Analysis", 79 *Harvard Law Review* 1121, 1144 (1966).

Bernardo,[3] and are insufficient to justify the assertion of jurisdiction over defendant in this action.

At the outset, it is not clear that these relationships are substantial enough to uphold plaintiffs' position. Records from two banks were submitted by plaintiffs. The records from Crocker National Bank show that defendant has maintained an account there for some time, but the balance is not very large and many of the transactions are for extremely small amounts. The records from the Bank of California pertain primarily to the Citizens Bank and Trust Company, a Philippine bank which apparently did not merge with defendant until January of 1976. The letter from the Manila branch of the Bank of America extending a line of credit to defendant does not contain information relating to defendant's actual activities in California. Cf. *Ratliff v. Cooper Laboratories, Inc.*, 444 F.2d 745, 748 (4th Cir. 1971). Since plaintiffs' cause of action is not related to defendant's activities in California, more than "minimum contacts" with the state are required, and it would be difficult to say that plaintiffs have shown sufficient contacts here. Cf. *Cornelison v. Chaney, supra,* 16 Cal.3d at 149, 127 Cal.Rptr. at 355.

It may be that records from all six banks would show a much more extensive business relationship with California.[4] Nevertheless, the nature of defendant's business in California would not subject it to "general" jurisdiction for causes of action not arising from that business. All of defendant's California business is carried on by the correspondent banks. These banks are not controlled by the defendant, nor is defendant their sole or even primary source of business. The conduct of defendant's business by independent, nonexclusive representatives is not sufficient to confer jurisdiction in the present case. *Bank of America v. Whitney Central National Bank*, 261 U.S. 171 (1923); *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333, 336 (1925); *Fisher Governor Co. v. Superior Court*, 53 Cal.2d 222, 1 Cal.Rptr. 1 (1959).

[3]The affidavit is attached to defendant's brief in support of its motion filed April 28, 1976.

[4]Plaintiffs noticed depositions of the custodians of records of the Bank of America and the United California Bank on April 30 and June 7, 1976, but have submitted no records from those banks, nor have they submitted anything pertaining to the final two correspondent banks, First National City Bank-San Francisco and First Chicago International Bank. Plaintiffs have not requested additional discovery time in order to obtain additional records.

Finally, the assertion of jurisdiction over defendant in this case would not be proper even if the nature and amount of defendant's business in California could theoretically subject it to "general" jurisdiction. Jurisdiction over the defendant must, in the particular circumstances of this case, still be fair and "reasonable". See *Lee v. Walworth Valve Co.*, 482 F.2d 297 (4th Cir. 1973). Plaintiffs have shown no particular interest that the state of California would have in providing a forum for this litigation. There is apparently no possibility of multiple suits if this action is not brought in California. Other forums in the United States with a greater interest in the litigation, notably New York and Ohio, may be available to plaintiffs, and litigating there would appear to create fewer burdens on plaintiffs than litigating in California. Plaintiffs have not even identified any particular advantage obtained under California law that cannot be obtained elsewhere. Plaintiffs have not sufficiently detailed any factors that would make it reasonable to conduct this litigation in California

and make the assertion of jurisdiction over defendant in this case consistent with the Due Process Clause of the Fourteenth Amendment.[5]

ACCORDINGLY, IT IS HEREBY ORDERED that defendant's motion to dismiss for lack of jurisdiction over the defendant is GRANTED.

Dated: July 21, 1976.

/s/ ALBERT C. WOLLENBERG
Albert C. Wollenberg
United States District Judge

[5]It is therefore unnecessary to discuss defendant's motion to dismiss because of improper venue.

Appendix "C"

Uniform Commercial Code (1972 Official Text)

§ 3—504. How Presentment Made

(1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made.

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in Section 4—210 presentment may be made in the manner and with the result stated in that section. As amended 1962.

§ 3—507. Dishonor; Holder's Right of Recourse; Term Allowing Re-Presentment

(1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be

obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (Section 4—301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

§ 5—107. Advice of Credit; Confirmation; Error in Statement of Terms

(1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

§ 5—114. Issuer's Duty and Privilege to Honor; Right to Reimbursement

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (Section 7—507) or of a security (Section 8—306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (Section 3—302) and

in an appropriate case would make it a person to whom a document of title has been duly negotiated (Section 7—502) or a bona fide purchaser of a security (Section 8—302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

[(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.]

[(5) In the case covered by subsection (4) failure to reject documents within the time specified in sub-paragraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.]